88-5806

IN THE SUPREME COURT OF THE UNITED STATES

(2)

ORIGINAL

JUDITH ANN NEELLEY, PETITIONER,)
)
)
VS.) NO._____
)
)
STATE OF ALABAMA, RESPONDENT)

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The petitioner, Judith Ann Neelley, by her attorney, asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has previously been granted leave to so proceed by this Court in January, 1987, based upon the attached affidavit which was filed with this Court at that time.

The circumstances of the petitioner have not changed. She is still an inmate at Tutwiler Prison for Women, on death row, awaiting execution. Petitioner has proceeded in forma pauperis before the Circuit Court of DeKalb County, Alabama, the Alabama Court of Criminal Appeals, the Supreme Court of Alabama, and the Supreme Court of the United States of America.

Respectfully submitted,
ROBERT B. FRENCH, JR., P.C.

By: Robert B. French
Attorney for Petitioner

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

12 pp

Judith Ann Neelley v. The State of Alabama

Petitioner

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SUPREME COURT, U.S.

AFFIDAVIT IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1. Judith Ann Neelley being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes ____ No xx

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

Judith Ann Neelley has been on Death Row at Julia Tutwiler Prison for Women since April 9, 1983

b. If the answer is no, state the date of your last employment and the amount of the salary or wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other sources?

Yes ____ No x

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? Yes ____ No xx

a. If the answer is yes, state the total value of the items owned. ____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ____ No x

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

/s/ Judith Ann Neelley

Subscribed and sworn to before me this 21 day of Oct., 1988

Barbara K. Moore
Notary

My commission expires 1-19-92

BEST AVAILABLE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JUDITH ANN NEELLEY, PETITIONER

VS.

THE STATE OF ALABAMA, RESPONDENT

RECEIVED
OCT 15 1988
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SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF ALABAMA

ROBERT B. FRENCH, JR., P.C.
POST OFFICE BOX 596
PORT PAYNE, ALABAMA 35967
205 845-2250

QUESTION PRESENTED FOR REVIEW

1. Whether the Petitioner's conviction was obtained by the unconstitutional failure of the Prosecution to disclose to the Petitioner evidence favorable to the case of the Petitioner?

2. Whether the intentional secreting of exculpatory evidence by the State of Alabama violated the constitutional rights of the Petitioner?

3. Whether there are newly discovered facts which would require that the sentence of the Petitioner be vacated by the Court?

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NO._____

JUDITH ANN NEELLEY, PETITIONER

VS.

THE STATE OF ALABAMA, RESPONDENT

_____

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF ALABAMA

The Petitioner, Judith Ann Neelley, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Alabama entered on August 19, 1988.

OPINIONS BELOW

On May 10, 1988, the Alabama Court of Criminal Appeals affirmed, without opinion, the trial court's denial of the Petitioner's petition for relief pursuant to Rule 20 Alabama Rules of Criminal Procedure [Formerly the writ of error coram nobis].

On August 19, 1988, the Supreme Court of Alabama denied the Petitioner's petition for writ of certiorari to the Court of Criminal Appeals of Alabama without opinion.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner challenges the affirmance of the denial of her petition pursuant to Rule 20 ARCP as violating several provisions of the United States Constitution, to-wit, the Fifth, Sixth, and Fourteenth Amendments.

STATEMENT OF THE CASE

The Petitioner's home in Cleveland, Tennessee was searched by officers representing at least 7 different law enforcement agencies while the Petitioner was incarcerated. One of the officers in attendance during the search was Tony Gilliland, the Chief Investigator of the Chattooga County, Georgia Sheriff's Department. Gilliland seized two large grocery bags of documents during the search. Instead to depositing these items of evidence in the locker of the appropriate law enforcement agency, Gilliland took this evidence to his home and asked his wife to go through the evidence and inspect it for information relevant to certain on-going investigations in Chattooga County, Georgia.

Attorneys for Petitioner attempted unsuccessfully to discover the whereabouts of the evidence prior to trial. They went to Cleveland, Tennessee specifically looking for the letters from Petitioner to her husband. Instead, they found letters from Petitioner's husband to the Petitioner. However, they did not find any letters from Petitioner to her husband. The letters of the husband of the Petitioner were made the cornerstone of the case of the Petitioner. The letters seized were of utmost importance to the case of the Petitioner. For this reason, the attorneys for the Petitioner visited Tony Gilliland on two separate occasions and requested this evidence. On each occasion, Gilliland denied the existence of said evidence.

The attorneys moved in discovery for the evidence from the State of Alabama and was told it did not exist.

The attorneys asked witnesses during the trial about the evidence and was told its whereabouts was unknown.

Tony Gilliland sat in the court room each day of the trial of the Petitioner and knew that the defense was searching with every means at its disposal to locate the evidence he had hidden in his home. Each day he attended the trial, Nell Gilliland, wife of Tony Gilliland, asked him to take the evidence to the trial and give it to the defense as it was critical to the defense of the Petitioner. Gilliland refused, and successfully secreted the evidence from October, 1982 until May 8, 1987 when Nell Gilliland gave an affidavit to the attorney for the Petitioner describing the events alleged herein. Subsequent to

the filing of the Rule 20 Petition by Petitioner on May 18, 1987, the State of Alabama produced what it represented to be the evidence and provided copies of same to the Petitioner.

In addition to the foregoing described evidence, the Petitioner presented evidence at her Rule 20 hearing that concerned her mental condition at the time of the commission of the crime for which she was accused. This was newly discovered evidence which did not exist at the time of the trial of the Petitioner. The Petitioner maintained that the trial court did not consider this evidence when it enhanced her sentence from life without parole to death by electrocution as the same did not exist.

The trial court overruled the Rule 20 petition and this decision was affirmed by the Alabama Court of Criminal appeals without opinion.

REASON FOR GRANTING THE WRIT

The Courts below failed to appropriately apply Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.ed 215 (1963), to the facts of this case. The Courts below did not appropriately apply U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1979), nor the Constitution of the State of Alabama or the United States Constitution to the facts of this case.

Further reasons for granting the writ are set out in the facts and arguments and law cited in Appendix A attached hereto and made a part hereof by this reference to same.

CONCLUSION

For the reasons shown herein, the Petitioner Judith Ann Neelley respectfully requests that a writ of certiorari issue to review the ruling of the Supreme Court of the State of Alabama.

Respectfully submitted,
ROBERT B. FRENCH, JR.,P.C.

Dated: October 14, 1988

By: Robert B. French, Jr.
Attorney for Petitioner

ROBERT B. FRENCH, JR.,P.C.
308 Alabama Avenue Southwest
Fort Payne, Alabama 35967

205 845-2250

CERTIFICATE OF SERVICE

I hereby certify that I did serve three copies of the foregoing petition upon the Attorney General for the State of Alabama by mailing said instruments to him, postage prepaid, on this the 14th. day of October, 1988.

Robert B. French, Jr.
Attorney for Petitioner

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P.O. BOX 301
MONTGOMERY 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDAN
Clerk
Ph. 261-4580

7th Div. 966 — DEKALB Circuit Court
CC 82-276.1

JUDITH ANN NEELLEY, Appellant vs. State of Alabama, Appellee

Dear Sir:

You are hereby notified that on May 10, 1988 ✓ the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

____ Notice of Appeal filed. Future correspondence should refer to the above number.

____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____. As to briefs, see Rules 28, 31 and 32, A.R.A.P.

____ On motion, record on appeal accepted and considered as timely filed in this Court.

____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

____ Appellant granted seven (7) additional days to file reply brief. Brief due on _____.

____ Brief of Appellant filed. ____ Oral argument requested by appellant.

____ Reply brief filed.

____ Oral argument request disallowed; appeal submitted on briefs.

____ Appeal submitted to the Court for decision in the following manner:

XXX **Affirmed** on appeal. **No opinion**. Judgment not final, see Rules 40 and 41, A.R.A.P.

____ Appeal **dismissed. No Opinion.**

____ Application for **rehearing and Rule 39(k), A.R.A.P., motion filed.**

____ Application for **rehearing filed.**

____ Application for **rehearing overruled. No opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

____ Application for rehearing **overruled. Rule 39(k), A.R.A.P., motion denied. No opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

____ Appeal placed on rehearing **ex mero motu.**

____ Certificate of final judgment issued to circuit clerk.

____

Mollie Jordan
CLERK
COURT OF CRIMINAL APPEALS OF ALABAMA

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P.O. BOX 301
MONTGOMERY 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDAN
Clerk
Ph. 261-4580

7th Div. 966 — DEKALB Circuit Court
CC 82-276.1

JUDITH ANN NEELLEY, Appellant vs. State of Alabama, Appellee

Dear Sir:

You are hereby notified that on June 14, 1988 ✓ the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

____ Notice of Appeal filed. Future correspondence should refer to the above number.

____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____. As to briefs, see Rules 28, 31 and 32, A.R.A.P.

____ On motion, record on appeal accepted and considered as timely filed in this Court.

____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

____ Appellant granted seven (7) additional days to file reply brief. Brief due on _____.

____ Brief of Appellant filed. ____ Oral argument requested by appellant.

____ Reply brief filed.

____ Oral argument request disallowed; appeal submitted on briefs.

____ Appeal submitted to the Court for decision in the following manner:

____ **Affirmed** on appeal. **No opinion.** Judgment not final, see Rules 40 and 41, A.R.A.P.

____ Appeal **dismissed. No Opinion.**

____ Application for **rehearing and Rule 39(k), A.R.A.P., motion filed.**

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____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

____ Appeal placed on rehearing **ex mero motu.**

____ Certificate of final judgment issued to circuit clerk.

____

Mollie Jordan
CLERK
COURT OF CRIMINAL APPEALS OF ALABAMA

THE STATE OF ALABAMA — JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

August 19, 1988

87-1143

EX PARTE: JUDITH ANN NEELLEY

PETITION FOR WRIT OF CERTIORARI

(Re: Judith Ann Neelley v. State)

CCA 7/966

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

MADDOX, J. - TORBERT, CJ., ALMON, BEATTY & HOUSTON, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 19th day of Aug 1988

Robert G. Esdale
Clerk, Supreme Court of Alabama